

ST 04-0033-GIL 01/29/2004 TELECOMMUNICATIONS EXCISE TAX

Generally, persons or entities that charge customers for telecommunications services are considered telecommunications retailers and are subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495. (This is a GIL.)

January 29, 2004

Dear Xxxxx:

This letter is in response to your letter received by our Chicago office on August 26, 2003, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC will soon offer a new product consisting of a service by which ABC will lease long distance telephone capacity and allow our clients to use that capacity to communicate with us electronically. ABC currently sells, rents, and services computer equipment. ABC has salesmen; some of whom may live in your state and others who travel into your state to make sales calls on clients and potential clients. ABC also has repair personnel; some of whom may live in your state and others who travel into your state to repair tangible personal property sold by ABC. ABC currently bills and remits the proper sales tax on its taxable sales and services.

ABC requests a written opinion on which it can rely should it be audited on whether the telephone connection sales to clients in your state are subject to your sales or use tax. These are the facts.

- The connection is made with the use of purchased long distance telephone capacity and is available only to our clients; not the general public. ABC purchases the long distance capacity from telecommunications companies such as XYZ. ABC itself is not a telecommunications provider. We simply purchase the

- long distance capacity, pay the appropriate telecommunications taxes to the provider, and charge our clients for using that capacity. The servers to which the clients connect are located in CITY/STATE.
- ABC will offer this service for a monthly fee with **no tangible personal property bundled with this charge.** ABC will occasionally sell tangible personal property in connection with the set up of the service, but understands that sales of tangible personal property are always taxable and will charge the appropriate sales tax.

If you have any questions regarding this matter, please call me.

DEPARTMENT'S RESPONSE:

For information regarding Telecommunications Excise Tax, please see 86 Ill. Adm. Code 495. Generally, persons or entities that charge customers for telecommunications services are considered telecommunications retailers and are subject to Telecommunications Excise Tax and possibly Telecommunications Infrastructure Maintenance Fees and Simplified Municipal Telecommunications Taxes. See 35 ILCS 630/1 et seq.; 35 ILCS 635/1 et seq.; and 35 ILCS 636/1 et seq. You may wish to request a Private Letter Ruling from the Department as described above. However, you will need to provide copies of your contracts with your customers and copies of bills showing how the charges for the telecommunications are being billed.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk